



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Steven Lee Gill, Custodian of Records
Power of Liberty, Inc.
P.O. Box 2844
Brentwood, TN 37207

NOV 21 2017

RE: MUR 7113
Power of Liberty, Inc.

Dear Mr. Gill:

On July 21, 2016, the Federal Election Commission (the "Commission") notified Power of Liberty of a complaint alleging that it violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided Power of Liberty with a copy of the complaint. Upon review of the allegations contained in the complaint, on November 14, 2017, the Commission found reason to believe that Power of Liberty violated 52 U.S.C. § 30104(f) and 11 C.F.R. § 104.20(b), provisions of the Act and its regulations, by failing to file proper disclosures with the Commission for disbursements related to Power of Liberty's electioneering communications, and authorized an investigation of these violations. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Power of Liberty may submit any factual or legal materials that it believes are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. See 52 U.S.C. § 30109(a)(4).

Please note that Power of Liberty has a legal obligation to preserve all documents, records and materials relating to this matter until such time as it is notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

Power of Liberty may consult with an attorney and have an attorney assist it in the preparation of its responses to this request. If Power of Liberty intends to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, email address, and telephone number of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission.

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If Power of Liberty is interested in pursuing pre-probable cause conciliation, it should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.


Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A), unless Power of Liberty notifies the Commission in writing that it wishes the investigation to be made public. For Power of Liberty's information we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1507 or cjacksonjones@fec.gov.

We look forward to Power of Liberty's response.

On behalf of the Commission,


Steven T. Walther
Chairman

Enclosure:
Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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6 **RESPONDENT:** Power of Liberty, Inc.

MUR: 7113

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9 **I. INTRODUCTION**

10 The Complaint alleges that Power of Liberty, Inc. ("Power of Liberty"), a 501(c)(4)
11 organization, failed to disclose at least \$53,227 in electioneering communications disseminated
12 by radio in Tennessee's Sixth Congressional District before the state's August 4, 2016,
13 Republican primary election. A news article cited in the Complaint states that Power of Liberty
14 also ran similar ads in Tennessee's Eighth district. Power of Liberty did not respond to the
15 Complaint.

16 Based on the available information, the Commission finds reason to believe that Power of
17 Liberty violated 52 U.S.C. § 30104(f) and 11 C.F.R. § 104.20(b).

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 **A. Facts**

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21 Power of Liberty is a Tennessee non-profit corporation¹ and is not registered with the
22 Commission. It was formed on May 2, 2016, by Steve Gill, an attorney and former
23 Congressional candidate, who serves as the organization's registered agent.² Gill operates a
24 media company, Gill Media, Inc., that develops advertisements.³

¹ Complaint at 1, n. 1; Tennessee Secretary of State, Business Entity Detail for Power of Liberty, Inc.,
<https://tubear.tn.gov/Ecommerce/FilingDetail.aspx?CN=139155096101164166254078100083150060250152189118>.

² Tennessee Secretary of State, Business Entity Detail for Power of Liberty, Inc.,
<https://tubear.tn.gov/Ecommerce/FilingDetail.aspx?CN=139155096101164166254078100083150060250152189118>.

1 Representative Diane Black and former Tennessee State Representative Joe Carr were
2 candidates in the August 4, 2016, Republican primary for Tennessee's Sixth Congressional
3 District.⁴

4 In mid-July 2016, a news article cited in the Complaint reported that Power of Liberty
5 disseminated "[a] wave of negative ads" targeting Republican primary election candidates in
6 Tennessee's Sixth and Eighth districts.⁵ On August 4, 2016, the date of the election, Power of
7 Liberty filed a notice with the Commission disclosing a disbursement of \$34,690 on August 1,
8 2016, for an electioneering communication for "income tax tv/per diem radio" that did not
9 identify a corresponding federal candidate.⁶ The Commission's Reports Analysis Division
10 ("RAD") sent Power of Liberty a Request for Additional Information ("RAI") regarding the
11 report, but Power of Liberty did not respond.⁷

12 The Complaint alleges that on or around June 27, 2016, Power of Liberty contracted with
13 various radio stations in Tennessee to broadcast advertisements that referred to Black and Carr.⁸
14 The Complaint attaches purported transcripts of two radio advertisements. The first describes
15 inconsistencies between Black's public statements on several policy issues, including the federal

⁴ Black defeated Carr in the primary election and won the general election.

⁵ Compl. at 1, n.3; <http://www.tennessean.com/story/news/politics/2016/07/14/diane-black-camp-slams-joe-carr-over-ads-dark-money-group/87060492/>.

⁶ 24 Hour Notice of Disbursements/Obligations for Electioneering Communications, Power of Liberty (Aug. 4, 2016), <http://docquery.fec.gov/pdf/312/201608049022178312/201608049022178312.pdf>.

⁷ <http://docquery.fec.gov/pdf/909/201608310300057909/201608310300057909.pdf>.

⁸ Compl. at 1 (Aug. 19, 2016); <http://www.tennessean.com/story/news/politics/2016/07/14/diane-black-camp-slams-joe-carr-over-ads-dark-money-group/87060492/>.

1 debt and immigration, and her congressional voting record.⁹ The second advertisement
2 unfavorably compares Black's congressional voting record on immigration with Carr's state
3 legislative record.¹⁰
4 Complainant alleges that the two radio advertisements aired continuously from
5 June 27, 2016, on stations that reach voters in the Sixth District and that FCC records suggest
6 that Power of Liberty spent \$67,422 on the advertisements.¹¹ Based on the assumption that an

⁹ The complaint provides the following transcript:

18-year incumbent, career politician Diane Black says Congress is full of hot air from politicians who say the right thing but don't do the right thing. That's exactly what *she* does. Diane Black says 'she voted against the Boehner-Obama budget' but the *Congressional Record* shows she voted for it. She says 'she voted against the crony capitalism at the Ex-Im Bank' but the Heritage Action scorecard shows she voted for it twice! She says 'she voted against higher spending and debt' but the truth is that our national debt has increased by over six trillion dollars since she's been in Congress thanks to her votes for more spending and higher debt. She says 'she helped write the law requiring accountability metrics in border security,' but her voting record shows she voted to give driver's licenses to illegal aliens. Call 18-year career politician Diane Black at (202) 225-4231. Tell her to stop spewing congressional hot air and tell the truth. Career politician Diane Black's record makes one thing clear: she's not the solution to the problems in Washington, she *is* the problem. Paid for by Power of Liberty Inc. powerofliberty.us. Not affiliated with nor approved by any campaign or campaign committee.

Compl., Attach. A.

¹⁰ The complaint provides the following transcript:

[UNINTELLIGIBLE] politicians like Diane Black is double talk. The border remains unsecured and the illegals continue to come. Call Diane Black today. (202) 225-4231. Tell her we need more than just tough talk on immigration, we need action. Be sure to ask her if she's so tough on illegal immigrants, why'd she vote to give illegals Tennessee driver's licenses? Paid for by Power of Liberty Inc. powerofliberty.us. Not approved by any candidate or candidate committee. Conservative Joe Carr is standing firm against the Washington establishment. While professional politicians talk tough about illegal immigration, Joe Carr has taken action to secure our borders, preserve our jobs, and protect our communities. As a legislator, he wrote and passed bills to block sanctuary cities in Tennessee and to require verification of legal status to get a job or taxpayer benefits. Call Joe Carr today. (615) 200-0681. And thank him for standing firm against the Washington insiders who refuse to secure our border and enforce our laws.

Compl., Attach. B. Because the disclaimer for this advertisement appears in the middle of the transcript, it is unclear whether the transcript is describing one advertisement or two.

¹¹ Compl. at 2 (citing Federal Communications Commission, Licensing and Databases: Public Inspection Files, available at <https://publicfiles.fcc.gov/>). The Complaint claims that it obtained payment information from FCC public files and cited to specific amounts that Power of Liberty paid to seven radio stations. Compl. at 2, n.4. The Complaint, however, did not include any of the corresponding invoices or other documents.

1 equal number of the Power of Liberty advertisements ran each day, Complainant estimates that
2 Power of Liberty spent at least \$53,227.89 of the \$67,422 in disbursements during the 30-day
3 period before the August 4, 2016, primary election.¹² As mentioned above, Power of Liberty
4 filed only one electioneering communication report disclosing a disbursement of \$34,690; that
5 report was two days late and incomplete, and it remains uncorrected.¹³

6 The news article mentioned above also referred to an advertisement run by Power of
7 Liberty in Tennessee's Eighth District.¹⁴ The radio advertisement referenced Brian Kelsey, a
8 state senator and candidate in the 2016 Republican Eighth District primary election, and the
9 advertisement reportedly reads, "As illegals continue to pour across our open borders, Senator
10 Brian Kelsey has a simple plan to deal with illegal immigration: Send illegal immigrants to
11 college and send Tennessee taxpayers the bill!"¹⁵ The article further reported that the radio
12 advertisements have been "punching" Greer, a Tennessee businessman.¹⁶ FCC public files show
13 that Power of Liberty spent \$7,050 on August 1, 2016, three days before the primary election, to
14 run a television advertisement about "Tax policy, including state income tax in Tennessee" that
15 referred to Kustoff.¹⁷

16 Power of Liberty did not respond to the Complaint.

¹² Compl. at 2, 4.

¹³ Compl. at 2. Power of Liberty has not filed any other additional electioneering communication reports.

¹⁴ Compl. at 1, n.3.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ [https://publicfiles.fcc.gov/find/power%20of%20liberty/page=offset=0/order=best-match/filter=\]/#files](https://publicfiles.fcc.gov/find/power%20of%20liberty/page=offset=0/order=best-match/filter=]/#files).

B. Legal Analysis

An "electioneering communication" is any "broadcast, cable, or satellite communication" that references a "clearly identified" federal candidate, is distributed "within 30 days before a primary . . . election" and is "targeted to the relevant electorate."¹⁸ "Broadcast, cable, or satellite communication" includes any communication publicly distributed over a radio station.¹⁹ Every person who pays for the "direct costs of producing and airing electioneering communications in an aggregate amount in excess of \$10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission" an appropriate disclosure report.²⁰

The radio advertisements identified in the Complaint that ran within 30 days before the August 4, 2016, primary (allegedly costing at least \$53,228) are electioneering communications. The sworn complaint, to which Power of Liberty did not respond, specifically alleges that "Power of Liberty contracted with a variety of radio stations . . . to broadcast certain advertisements . . . from June 27, 2016 until August 3, 2016," and that "the [a]dvertisements . . . aired continuously."²¹ The advertisements named federal candidates Black and Carr, and targeted the relevant electorate in the Sixth Congressional District. As such, Power of Liberty was required to file an electioneering communication report after it paid for or contracted to spend over \$10,000 for any of the radio advertisements.²²

¹⁸ 52 U.S.C. § 30104(f)(3); 11 C.F.R. § 100.29(a).

¹⁹ 11 C.F.R. § 100.29(b)(1).

²⁰ 52 U.S.C. § 30104(f)(1); 11 C.F.R. §§ 104.5(j), 104.20(b).

²¹ Compl. at 1-3.

²² 52 U.S.C. § 30104(f)(5); 11 C.F.R. § 104.20(a).

1 Additionally, a news article cited in the Complaint indicates that Power of Liberty also
2 disseminated at least an additional radio advertisement referencing a federal candidate in the
3 Eighth District during the 30-day pre-primary electioneering communication window. Notably,
4 a radio advertisement distributed sometime in July 2016 reportedly stated: "As illegals continue
5 to pour across our open borders, Senator Brian Kelsey has a simple plan to deal with illegal
6 immigration: Send illegal immigrants to college and send Tennessee taxpayers the bill!" This
7 radio advertisement appears to be an electioneering communication — it names a federal
8 candidate (Kelsey), and it targeted the relevant electorate. Therefore, Power of Liberty may also
9 have been required to file electioneering communication reports for these radio advertisements.
10 As mentioned above, Power of Liberty filed only one electioneering communication report,
11 which was late and incomplete, and it did not respond to an RFAI regarding the report, or to the
12 Complaint.

13 The available information appears to show that Power of Liberty failed to file or correct a
14 number of required reports for disbursements it made during the 30-day electioneering
15 communication window. As such, the Commission finds reason to believe that Power of
16 Liberty, Inc. violated 52 U.S.C. § 30104(f) and 11 C.F.R. § 104.20(b).